

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 10, 2009

**RODNEY N. BUFORD v. STATE OF TENNESSEE and RICKY J. BELL,
WARDEN**

**Appeal from the Circuit Court for Davidson County
No. 08C-1144 Joe P. Binkley, Jr., Judge**

No. M2008-02770-CCA-R3-HC - Filed January 25, 2010

After pleading guilty to four counts of armed robbery and one count of felony murder in Davidson County, Petitioner, Rodney N. Buford, was sentenced to life in prison for the felony murder conviction and ten years for each armed robbery conviction. Two of the armed robbery convictions were ordered to run consecutively resulting in an effective sentence of twenty years with regard to the armed robberies. Petitioner filed a petition for writ of habeas corpus relief in which he argued that his ten-year sentences were imposed under the incorrect sentencing act and, therefore, were illegal. The habeas corpus court summarily dismissed the petition. On appeal, Petitioner argues that the habeas corpus court erred in dismissing his petition. After a thorough review of the record, we conclude that the ten-year sentences imposed by the trial court were authorized by both the sentencing acts in question, therefore, Petitioner's sentences were not unlawful and, as such, are not a basis for habeas corpus relief. We affirm the summary dismissal of the petition by the habeas corpus court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which NORMA MCGEE OGLE, and J.C. MCLIN, JJ., Joined.

Rodney N. Buford, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; and Victor S. Johnson, District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

In 1990, Petitioner, Rodney N. Buford, pled guilty in Davidson County to four counts of armed robbery and one count of felony murder. *Rodney Buford v. State*, No. M1999-00487-CCA-R3-PC, 2000 WL 1131867, at *1 (Tenn. Crim. App., at Nashville, Jul. 28, 2000), *perm. app. denied*, (Tenn. Jan. 16, 2001). The trial court imposed a life sentence for the felony murder and ten years for each of the armed robbery convictions. *Id.* Two of the armed robbery convictions were ordered to run consecutively to each other for an effective sentence of life and twenty years. *Id.*

Petitioner filed a petition for habeas corpus relief in 1999. *Id.* In his first petition, he argued that the felony murder conviction and the life sentence were void because the trial court sentenced him under the Criminal Sentencing Reform Act of 1989 instead of the 1982 Sentencing Act. *Id.* The habeas corpus court denied the petition. *Id.* On appeal, this Court affirmed the habeas corpus court's denial of the petition. The Court stated, "Because the range of sentence was the same under both the 1982 Act and the 1989 Act, there is no facial invalidity." *Id.* at *2.

On April 14, 2008, Petitioner filed the current petition for habeas corpus relief. In this petition, he argued that his convictions for armed robbery were void because he was sentenced under the Criminal Sentencing Reform Act of 1989 as opposed to the 1982 Sentencing Act. Petitioner argues that his sentence was illegal under the 1982 Act because the minimum sentence is ten years, to which he was sentenced, but under the 1989 Act the minimum sentence would have been eight years.

The habeas corpus court summarily dismissed the petition for two reasons. The first reason set out by the habeas corpus court was that Petitioner failed to attach a copy of his first petition and failed to provide a satisfactory reasons for failing to attach it. Furthermore, the habeas corpus court stated, the judgment forms did not indicate whether he was sentenced under the 1989 Act or the 1982 Act. Therefore, the illegality of the sentence was not apparent from the judgment, as required for habeas corpus relief.

Petitioner appeals the dismissal of his petition to this Court.

ANALYSIS

The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. *Id.* Moreover, it is

the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. *See Taylor*, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d 619 (Tenn. Crim. App. 1994).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Summers v. State*, 212 S.W.3d 251, 260 (Tenn. 2007); *Hickman*, 153 S.W.3d at 19-20; *Archer*, 851 S.W.2d at 165. For the benefit of individuals such as Petitioner, our legislature has explicitly laid out the formal requirements for a petition for a writ of habeas corpus at T.C.A. § 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the

name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

“A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements” *Summers*, 212 S.W.3d at 260; *Hickman*, 153 S.W.3d at 21. Further, in *Summers*, our supreme court explained:

In the case of an illegal sentence claim based on facts not apparent from the face of the judgment, an adequate record for summary review must include pertinent documents to support those factual assertions. When such documents from the record of the underlying proceedings are not attached to the habeas corpus petition, a trial court may properly choose to dismiss the petition without the appointment of counsel and without a hearing.

212 S.W.3d at 261.

We have reviewed Petitioner's petition and, as stated by the habeas corpus court, Petitioner has failed to attach his first petition or set out a reason for his failure to do so. This failure in and of itself is a sufficient basis upon which to summarily dismiss the Petition. However, as stated above, the habeas corpus court summarily dismissed the application based upon the procedural requirements, but also dismissed based upon the fact that the illegality of the sentence was not apparent from the judgment. Our supreme court has stated:

A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements; however, dismissal is not required. The habeas corpus court may instead choose to afford the petitioner an opportunity to comply with the procedural requirements, or the habeas corpus court may choose to adjudicate the petition on its merits. *See* Tenn. Code Ann. § 29-21-109 (2000) (“If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the writ may be refused, the reasons for such refusal being briefly endorsed upon the petition, or appended thereto.”).

Hickman, 153 S.W.3d at 21 (footnotes omitted).

On April 5, 1990, Petitioner pled guilty to the armed robbery charges stemming from incidents which occurred on April 14, 18, and 24, 1989, according to the judgments. The 1989 Act did not go into effect until November 1, 1989. *See* T.C.A. §§ 40-35-101 to -504. In dealing with sentencing situations where the offense occurred before the effective date of the Act but sentencing occurred after the effective date, our supreme court has stated:

[I]n order to comply with the ex post facto prohibitions of the U.S. and Tennessee Constitutions, trial court judges imposing sentences after the effective date of the 1989 statute, for crimes committed prior thereto, must calculate the appropriate sentence under both the 1982 statute and the 1989 statute, in their entirety, and then impose the lesser sentence of the two.

State v. Pearson, 858 S.W.2d 879, 884 (Tenn. 1993); *see also* T.C.A. §§ 39-11-112, 40-35-117(b).

Attached to Petitioner’s writ of habeas corpus petition is a document titled Petition to Enter a Plea of Guilty. The document sets out the offenses for which Petitioner was charged. It states, “Armed Robbery - (old law) 10 years to life (new law) 8 years to 30 years.” Another document sets out the plea agreement in which Petitioner would be sentenced to ten years for each armed robbery conviction.

The sentence imposed, ten years, is within the sentencing range of both acts. It also appears that a *Pearson* calculation of the potential sentence under both sentencing acts was completed in the Petition to Enter a Guilty Plea signed by Petitioner. This Court has previously stated when a sentence imposed under the act used to determine a sentence is

within the range of sentence under the other act, the sentence is lawful, and habeas corpus relief is not available in that situation. *See Luther E. Fowler v. Howard Carlton*, No. E2004-013456-CCA-R3-HC, 2005 WL 645206, at *5 (Tenn. Crim. App., at Knoxville, Mar. 21, 2005), *perm. app. denied*, (Tenn. Jun. 27, 2005); *David T. Redfern v. Ricky J. Bell*, No. 01C01-9505-CC-00148, 1996 WL 233984, at *1 (Tenn. Crim. App., at Nashville, May 9, 1996) *perm. app. denied*, (Tenn. Oct. 14, 1996). Therefore, we conclude that Petitioner's sentence is lawful and the imposition of the sentences is not a ground for habeas corpus relief.

CONCLUSION

For the foregoing reasons, we affirm the habeas corpus court's summary dismissal of the petition.

JERRY L. SMITH, JUDGE